



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2010

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2010-14059

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393690.

The Corpus Christi Police Department (the "department") received a request for a specified offense report. You state you have released some of the requested information. You claim portions of the remaining information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the department's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). Although you state the department received the instant request on June 28, 2010, the written request for information reflects that the request form was completed for the requestor by an employee of the department on June 24, 2010. Therefore, we conclude the department received the request on June 24th. You inform us the department was closed on July 5, 2010. Accordingly, the department's ten-day deadline was July 9, 2010. You did not request a decision from this office until July 13, 2010. Accordingly, we find the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision Nos. 630 (1994), 319 (1982). You raise section 552.101 of the Government Code in conjunction with the informer's privilege. Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect the interests of a third person, the informer's privilege, unlike other claims under section 552.101, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302, and the department may not withhold any of the submitted information on that basis. You also claim the information at issue is excepted from disclosure under section 552.108 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the submitted information may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of the submitted information, it must be released.¹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

¹We note that the information being released contains confidential information, the requestor's Texas driver's license number, to which he has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Sincerely,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 393690

Enc. Submitted documents

c: Requestor
(w/o enclosures)